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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA AT ANCHORAGE

12 ENOCH ADAMS, JR., LEROY ADAMS,
13 ANDREW KOENIG, JERRY NORTON
DAVID SWAN and JOSEPH SWAN.

Case No. A04-49 (JWS)

Plaintiffs,

V.

TECK COMINCO ALASKA INCORPORATED

Defendant.

UNOPPOSED MOTION FOR
LEAVE TO TAKE
DEPOSITION OF RANDOLPH
FISCHER BY MARCH 9, 2008
AND DECLARATION OF
LUKE COLE IN SUPPORT
OF MOTION

19 NANA REGIONAL CORPORATION and NORTHWEST ARCTIC BOROUGH

Intervenors-Defendants

The Adams Plaintiffs file this motion for leave to take the deposition of Randolph Fischer in this case by March 9, 2008. As the Court is aware, Mr. Fischer is an elected member of the Colorado legislature, and because of his unavailability for trial the Court ordered his testimony to be offered by deposition. Order at Docket 167. The Court has also ordered all deposition testimony to be used at trial (in May 2008) to be filed by January 22, 2008. Order at Docket 177.

MOTION FOR LEAVE TO TAKE DEPOSITION
OF RANDOLPH FISCHER BY MARCH 9, 2008

In preparing the statement of issues, the statement of uncontested facts, the witness lists and the trial exhibits for filing on January 22, as well as updating the expert reports for filing on January 18, the parties have been unable to find a mutually agreeable time in the four parties' attorneys' schedule and Mr. Fischer's schedule (which, during legislative session, is limited to Sundays). Declaration of Luke Cole in Support of Motion ("Cole dec."), ¶2. The parties have identified March 9, 2008, as a mutually acceptable date on which Mr. Fischer is available to be deposed. Cole dec. ¶3. Adams thus respectfully requests leave of the Court to depose Mr. Fischer on March 9 and file his deposition transcript as soon thereafter as it is prepared by the Court reporter.

10 NANA, the Northwest Arctic Borough, and Teck Cominco do not oppose this motion.
11 Cole dec. ¶4. Indeed, it was counsel for Teck Cominco who suggested we ask the Court for a
12 time to take the deposition after the deadline for filing exhibits and witness lists because of the
13 difficulty in scheduling the deposition. Cole dec. ¶4.

Because trial is not until May 19, and Mr. Fischer's testimony will not be used until the penalty phase of the trial (projected for July), no party would be prejudiced by not having the deposition testimony filed sooner than March 9. Parties would be prejudiced by having to take several travel days to get to and from Denver, and a day of deposition in Denver, between now and January 22, however. Cole dec. ¶5.

19 January 9, 2008 Respectfully submitted,

21 CENTER ON RACE, POVERTY & THE ENVIRONMENT

22 _____ /S/ Luke Cole
23 Luke Cole

24 || Attorneys for Plaintiffs

DECLARATION OF LUKE W. COLE IN SUPPORT OF MOTION

I, Luke Cole, declare:

1. I am over 18 years of age and not party to this action.
 2. In preparing the statement of issues, the statement of uncontested facts, the witness and the trial exhibits for filing on January 22, as well as updating the expert reports for filing on January 18, the parties have been unable to find a mutually agreeable time in the four days' schedule and Mr. Fischer's schedule (which, during legislative session, is limited to two days).
 3. The parties have identified March 9, 2008, as a mutually acceptable date on which Mr. Fischer is available to be deposed.
 4. I have spoken with counsel for NANA, the Northwest Arctic Borough, and Teck Cominco and they do not oppose this motion. In fact, it was counsel for Teck Cominco who suggested we ask the Court for a time to take the deposition after the deadline for filing exhibits and witness lists because of the difficulty in scheduling the deposition.
 5. The Adams plaintiffs would be prejudiced by having to take several travel days and a deposition in Denver between now and January 22, as they are working to put together the final filings due on January 18 and January 22, 2008 under the Court's pretrial orders.

I declare that the foregoing is true and correct. Signed under penalty of perjury this 9th day of January, 2008 at San Francisco, California.

/S/ Luke Cole

CERTIFICATION OF SERVICE

I certify that on the 9th day of January 2008, a true and correct copy of the Unopposed Motion for Leave to Take Deposition of Randolph Fischer and Declaration of Luke Cole were served via electronic mail on the following counsel of record:

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/s/ Luke Cole
Luke W. Cole